

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-CR-118

KEITH A. ROBERTS,

Defendant.

ORDER DENYING MOTION TO DISMISS

Defendant Keith Roberts has been charged by indictment with five counts of wire fraud. The violation dates extend from February, 2001 to January 2004. All of the counts stem from an alleged scheme by Roberts to defraud the United States Department of Veteran's Affairs (VA) of over \$329,000 in compensation benefits by concocting a story that he witnessed the non-combat accidental death of a fellow serviceman while serving in Italy in 1969. Roberts claimed that as a result of that incident, he suffers from post-traumatic stress disorder ("PTSD").

As a result of the VA's determination that Roberts fabricated the story of his involvement in the tragic death of a fellow service member, his compensation benefits and his general eligibility for VA benefits have been severed. Roberts has challenged the decision of the VA to terminate his benefits administratively. The Board of Veteran's Appeal recently upheld the VA's severance determination in a decision dated August 26, 2005. Roberts has the right to appeal the decision of the Board of Veteran's Appeal to the Court of Appeals for Veteran's Claims. *See* 38 U.S.C. § 7252. It is the existence of these administrative procedures for challenging the severance of his benefits that forms the basis of Roberts' Motion to Dismiss this prosecution.

Roberts appears to argue that exclusive jurisdiction over matters pertaining to the claims for and receipt of benefits under the benefits dispensed by the Veteran's Administration rests with the Veteran's Administration. Stated in his own words, his argument runs as follows:

[i]t is obviously apparent that the Federal Circuit Court of the Eastern District of Wisconsin [sic] does not and did not have the jurisdiction to indictment [sic], and begin prosecution of Roberts for alleged fraud in obtaining "VA" service connected compensation. The Government's very own allegation that "Roberts falsely claimed to suffer from Post-traumatic Stress Disorder (PTSD) as a result of his role in the 1969 Naval aircraft accident involving Gary Holland" and the Government's allegations "that Roberts was not present at the time of the accident" and that Government alleges [sic] "that Roberts does not have PTSD directly related to military service" are however, not only medical determinations to be provided by an expert medical mind board certified in diagnosing PTSD, said allegations are obviously determinations as to Roberts' entitlement to service connected compensation for PTSD directly related to military service, and can't be determined by VAOIG Special Agents nor by the Federal Circuit Court of the Eastern District of Wisconsin [sic], but only the Secretary of the Department of Veterans Affairs and the judicial processes provided by Congress regarding Veterans Affairs.

(Docket 42, Motion to Dismiss at 6.) Thus, Roberts argues, this court has no jurisdiction and the indictment should be dismissed.

Roberts' motion will be denied. Roberts is charged with five counts of wire fraud in violation of Title 18 U.S.C. § 1343. This court has jurisdiction over cases in which individuals are charged with violations of federal law. Since Roberts is charged with a violation of the Federal Criminal Code, federal jurisdiction exists and his motion is denied.

Dated this 5th day of October, 2005.

s/ William C. Griesbach
William C. Griesbach
United States District Judge